IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2641 OF 2002

Atmaram S. Satpure .. Petitioner

versus

The General manager, BEST undertaking

and others .. Respondents

...

Ms.Neeta Karnik for the petitioner.

Mr.S.K. Talsania i/b Crawford Bayley & Co. for the respondent no.1.

CORAM : D.G. KARNIK,J.

DATED : 28th June 2005.

P.C.:

1. By this petition the petitioner challenges the judgement and order dated 10th October, 2001 passed by the President, Industrial Court, Mumbai in revision confirming the order passed by the Labour Court ordering reinstatement of the petitioner without continuity of service and back wages.

2. The respondent no.1 is an undertaking of Mumbai Municipal Corporation engaged in providing bus transport services in the city. The petitioner was employed as a conductor by the respondent no. 1. It was the duty of the petitioner to issue tickets to every passenger and to collect the fare and account for it. In a surprise inspection conducted by Supervisors of the respondent no.1 undertaking the petitioner was found to have not issued ticket to one of the passenger and to have given a used ticket to another passenger. The petitioner was charge sheeted for the misconduct and in the domestic enquiry was found guilty. After a show cause notice and opportunity of being heard the petitioner was dismissed from service. Two internal appeals challenging the order of dismissal were unsuccessful. The petitioner thereafter filed an application bearing ULP Complaint No. 287 of 1999 alleging unfair labour practice under Entry 1 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act (for short 'the Act'). In the complaint the petitioner alleged that his termination amounted to unfair labour practice and therefore he should be

reinstated in service with continuity of service and full back wages. Before the Labour Court, none of the parties adduced any oral evidence but relied upon the records of the domestic enquiry. After hearing the parties and after perusing the records the Labour Court held that the petitioner had not established that the findings recorded by the Enquiry Officer in the domestic enquiry were perverse or not based on evidence before him. The Labour Court however held that as the petitioner was in service for 20 years and the amount misappropriated was only Rs.2.50 and shortage was only of Rs.3.50 and the punishment of termination from service imposed was grossly excessive. It also took into consideration that in the past 20 years there were no charges of fraud against the petitioner except minor charges of shortage in cash. The Labour Court therefore held that the punishment imposed was grossly excessive. In this view of the matter the Labour Court partly allowed the complaint and ordered reinstatement of the petitioner but without any continuity in service and back wages.

3. Aggrieved by the order of reinstatement the respondent no.1 filed a revision before the

Industrial Court. Aggrieved with the order refusing the continuity of service and the back wages the petitioner also filed a revision before the Industrial Court. By a common judgement and order dated 10th October 2001 the Industrial Court dismissed both the revision applications. That order is impugned in this Writ Petition.

4. Learned counsel for the petitioner contends that the findings recorded by the Labour Court that the petitioner was guilty of fraud and/or misappropriation is erroneous and perverse. Further finding about shortage of cash of Rs.3.50, according to the learned counsel, is also erroneous and perverse. It is worthwhile to note that the domestic enquiry was held and witnesses were examined. The witnesses were cross examined by the petitioner and on appreciation of the evidence the Enquiry Officer came to the conclusion that there was sufficient evidence of misappropriation and shortage. The findings were based on evidence. The Labour Court has also held that the evidence was sufficient. The Industrial Court also has confirmed the said finding. I do not see any perversity in the findings of fact recorded by the Enquiry Officer

and confirmed by the Labour Court and the Industrial Court about the misconduct of the petitioner. The petitioner was held to be guilty of misconduct and that too of a serious misconduct of fraud and misappropriation. In my view, the amount involved was irrelevant. However, since the order of the Industrial Court has become final qua the respondent no.1 who has not chosen to challenge the order, it is not necessary to consider further whether the Labour Court and the Industrial Court erred in ordering reinstatement. The Labour Court and the Industrial Court have shown adequate leniency. It cannot be said that the Courts below committed any error of law in declining to award back wages and continuity of service to the petitioner. No interference is called for in exercise of writ jurisdiction under Article 226 of the Constitution of India.

5. For these reasons, petition is dismissed. Rule discharged with no order as to costs.

D.G. KARNIK,J